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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,608	08/11/2003	Patrick Flynn	ENER-0001-4	2473
22506	7590	12/20/2005	EXAMINER	
JAGTIANI + GUTTAG 10363-A DEMOCRACY LANE FAIRFAX, VA 22030			LANGEL, WAYNE A	
			ART UNIT	PAPER NUMBER
			1754	

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/637,608	Applicant(s) FLYNN ET AL.	
	Examiner Wayne Langel	Art Unit 1754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-4,7-11,15,17,18,21-27,31-34,37-41 and 45-61 is/are pending in the application.
- 4a) Of the above claim(s) 15,17,18,21-27,31-34,37-41,54-58,60 and 61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-4,7-11,47-53 and 59 is/are rejected.
- 7) ☒ Claim(s) 45 and 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Newly submitted claims 54-58, 60 and 61 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The container recited in claims 54-58 would not require the details of composition claims 3, 4, 7-11 and 47-53, and the method recited in claims 60 and 61 would not require the details of composition claims 3, 4, 7-11 and 47-53. However claim 2 would link claims 54-58, 60 and 61 with claims 3,4, 7-11 and 47-53. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 54-58, 60 and 61 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim 59 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no "description support" in the original specification for the recitation of the odorant being in the vapor phase at a pressure greater than atmospheric pressure. Applicants' argument, that support is found in original claim 1 and in paragraphs [0010], [0011], [0012], [0068] and [0064], is not convincing, since these portions of the specification state that the odorant is in a vapor phase at detectable concentration at a pressure of 6000 psi, which is not the same as being in the vapor phase at a pressure greater than atmospheric pressure.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 7-11, 47-53 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2645622 in view of Prentice . It would be obvious from Prentice to employ a selenium compound as the odorous compound in the composition of FR '622, since FR '622 suggests in the Abstract that any odorous gaseous product may be added, and Prentice discloses on page 2, lines 6-10 that selenides have a distinctive and repulsive odor, and establishes the equivalence between mercaptans and selenides.

Claims 2, 7-11 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '622 in view of either Borschel et al or Rasmussen et al. It would be obvious from either Borschel et al or Rasmussen et al to employ hydrogen selenide as the odorous compound in the composition of FR '622, since FR '622 suggests in the Abstract that any odorous gaseous product may be added, and Borschel et al and Rasmussen et al both teach that hydrogen selenide has a repugnant odor. (See col. 1, lines 42-44 of Borschel et al, and col. 4, lines 21-24 of Rasmussen et al.)

Claims 2, 3, 7-11, 47-49, 52 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '622 in view of Schrauzer. It would be obvious from Schrauzer to employ an alkyl selenol as the odorous product in the composition of FR

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'622, since FR '622 suggests in the Abstract that any odorous gaseous product may be employed, and Schrauzer teaches in Paragraph [0021] that selenols have an unpleasant odor.

Claims 2, 4, 7-11, 50, 51, 53 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over FR '622 in view of Baugh. It would be obvious from Baugh to employ dimethyl selenide or its homologs as the odorous gaseous product in the composition of FR '622, since FR '622 suggests in the Abstract that any odorous gaseous product may be employed, and Baugh teaches in col. 5, lines 40-50 that methyl selenide and dimethyl selenide produce odors that are offensive to certain types of animals.

Applicant's argument, that the examiner has failed to identify a single non-sulfur odorous compound taught or suggested by FR '622, is not convincing, since the rejection is not based on a holding that FR '622 discloses non-sulfur odorous compounds. Applicants' argument, that FR '622 does not and cannot suggest that compounds other than sulfur compounds may be used as odorants with hydrogen, is not convincing, since applicants have not explained why the disclosure in the Abstract of FR '622 of adding an "odorous gaseous product" would not suggest the addition of an odorous gaseous product, regardless of whether such product is sulfur-containing or non-sulfur-containing.

Claims 45 and 46 are objected to as based on a rejected parent claim, and would be allowed if written in independent form.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Langel whose telephone number is 571-272-1353. The examiner can normally be reached on Monday through Friday, 8 am - 3:30 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Wayne Langel
Primary Examiner
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